

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

NITRO ELECTRIC COMPANY, INC.,

Plaintiff,

v.

ALTIVIA PETROCHEMICALS, LLC

Defendant.

Civil Action No. 3:17-cv-02412

**PLAINTIFF NITRO ELECTRIC COMPANY, INC.'S MOTION FOR COSTS
ASSOCIATED WITH SERVICE AND ATTORNEYS' FEES**

Plaintiff Nitro Electric Company, Inc., by its undersigned attorneys, respectfully submits this Motion for Costs Associated with Service and Attorneys' Fees.

Background

On April 20, 2017, Plaintiff Nitro Electric Company, Inc. ("Nitro") filed a Complaint against Defendant ALTIVIA Petrochemicals, LLC ("ALTIVIA"). (Doc. #1). One day later, on April 21, 2017, Nitro sent ALTIVIA a Notice of Lawsuit and Request for Waiver of Service of Summons ("Notice and Waiver"), requesting that ALTIVIA waive service and avoid the costs associated with service, by certified mail, return receipt requested. (Doc. #6). The United States Postal Service return receipt shows that ALTIVIA, through its agent, received the Notice and Waiver on April 25, 2017. (A true and correct copy of the United States Postal Service Receipt is attached hereto as Exhibit A.)

Discussion

Pursuant to Fed. R. Civ. P. 4(d)(1), parties have a duty to avoid unnecessary expenses associated with serving a summons. Therefore, before serving the summons, the plaintiff can request that the defendant agree to waive service, and therefore allow the defendant additional time to answer or otherwise respond to the complaint. Fed. R. Civ. P. 4(d)(1). If, however, the defendant fails, without good cause, to sign and return the waiver requested by the plaintiff, then the Court must impose on the defendant: (1) the expenses later incurred in making service; and (2) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses. Fed. R. Civ. P. 4(d)(2).

In an effort to avoid the unnecessary expenses associated with serving a summons, Nitro sent to ALTIVIA the Notice and Waiver on April 21, 2017, which ALTIVIA received through its agent on April 25, 2017. In the Notice and Waiver, Nitro requested that ALTIVIA return the Waiver within forty-five (45) days from receipt, as required by L.R. Civ. P. 4.1. ALTIVIA acknowledged receipt of the Notice and Waiver by its agent signing for the certified mailing, but ALTIVIA failed to meet the return deadline. ALTIVIA has not, and cannot, provide any good cause as to why it failed to meet this deadline. Due to ALTIVIA's failure, Nitro was forced to serve ALTIVIA with the summons and incur expenses in the amount of \$58.05 in doing so. (A true and correct copy of the Judicial Attorney Services, Inc. Invoice is attached hereto as Exhibit B.) Nitro also incurred reasonable expenses in the amount of \$500.50 in drafting and filing this Motion to collect these service expenses. Accordingly, pursuant to Fed. R. Civ. P. 4(d)(2), Nitro respectfully requests that the Court award it the expenses and attorneys' fees that it incurred in effecting service and drafting and filing this Motion.

Respectfully submitted this 14th day of June, 2017.

/s/ Daniel J. Cohn

Julia A. Chincheck (WV Bar No. 718)
Daniel J. Cohn (WV Bar No. 11916)
Bowles Rice LLP
600 Quarrier St.
Charleston, WV 25301
Telephone: (304) 347-1100
Facsimile: (304) 343-3058
jchincheck@bowlesrice.com
dcohn@bowlesrice.com

and

Brian G. Corgan
Georgia Bar No. 187700*
Ethan M. Knott
Georgia Bar No. 737481*
KILPATRICK TOWNSEND &
STOCKTON LLP
1100 Peachtree Street NE, Suite 2800
Atlanta, GA 30309-4528
Telephone: 404-815-6217
Facsimile: 404-541-3163
bcorgan@kilpatricktownsend.com
eknott@kilpatricktownsend.com

**Pro Hac Vice*

ATTORNEYS FOR NITRO ELECTRIC COMPANY, INC.

EXHIBIT A

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Altivia Petrochemicals, LLC
c/o Corporation Service
Company, its Registered Agent
2711 Centerville Rd., Ste 400
Wilmington, DE 19808



9590 9402 1592 5362 3902 34

2. Article Number (Transfer from service label)

7013 0600 0000 5071 4374

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Shelia Wille

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below:

No

3. Service Type

- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Restricted Delivery | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

Exhibit B

Knott, Ethan

Subject: Your Judicial Attorney Services, Inc. receipt [#1516-7903]



\$58.05 at Judicial Attorney Services, Inc.

VISA 7405

June 13, 2017

#1516-7903

Description	Amount
Invoice 226211	\$58.05
Total	\$58.05

Have a question or need help? [Send us an email](#) or [give us a call at \(630\) 221-9007](#).

Something wrong with the email? [View it in your browser](#).
You are receiving this email because you made a purchase at
[Judicial Attorney Services, Inc.](#).

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

NITRO ELECTRIC COMPANY, INC.,

Plaintiff,

v.

ALTIVIA PETROCHEMICALS, LLC

Defendant.

Civil Action No. 3:17-cv-02412

CERTIFICATE OF SERVICE

I certify that I have this day served the Defendant in this action with the foregoing Plaintiff Nitro Electric Company, Inc.'s Motion for Costs Associated with Service and Attorneys' Fees by regular U.S. Mail addressed to the following:

Corporation Service Company
Registered Agent for Altivia Petrochemicals, LLC
2711 Centerville Rd.
Suite 400
Wilmington, Delaware 19808

This 14th day of June, 2017.

/s/ Daniel J. Cohn
Daniel J. Cohn